

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

and

5 OSAGE MINERALS COUNCIL,

6 Intervenor-Plaintiff,

vs.

No. 14-CV-704-GFK-JFG

7 OSAGE WIND, LLC; ENEL, KANSAS,
8 LLC; and ENEL GREEN POWER
NORTH AMERICA, INC.,

9 Defendants.

11 VIDEO ZOOM DEPOSITION OF CRAIG MAZUROWSKI
12 TAKEN ON BEHALF OF THE PLAINTIFF
ON JUNE 7, 2021 AT 10:03 AM
13 REPORTER PRESENT IN OKLAHOMA CITY, OKLAHOMA
APPEARANCES

14 On behalf of the PLAINTIFF:

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23 (Appearances continued on the following page.)

24 VIDEOTAPED BY: Kaleb Pinalto

25 REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

Exhibit 10

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1 other projects as backfill, that those were being used
2 as structural support for the foundation, for the wind
3 towers; is that correct?

4 A Yes.

5 MS. STEVENSON: Object to form.

6 Q (BY MR. ASHWORTH) Is it your testimony
7 that when clay, you know -- scratch that. Let me
8 back back up.

9 Have you ever been on a project where shale
10 has been encountered and used as backfill?

11 A I don't recall.

12 Q Is it your testimony that, in your
13 experience, when clay and limestone is used as
14 backfill, it's being used for the means of achieving
15 the purpose of structural support?

16 A Repeat the question.

17 Q Sure. Is it your testimony that, based upon
18 your experience, when clay and limestone is used as
19 backfill, is it being used as a means of achieving the
20 purpose of structural support?

21 A Yes.

22 Q During the excavation process -- this is,
23 you know, again, based on your experience, not
24 specifically to the Osage Wind project. But during
25 excavation process, is topsoil generally sorted and

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1 A Excess, no.

2 Q The last sentence there says, "Contractor
3 shall not haul material outside of project boundaries
4 nor use native material for any construction purposes
5 other than noted above."

6 I read that correctly; right?

7 A Yes.

8 Q Okay. Was any of the material that was
9 excavated used for construction purposes other than
10 the construction purpose of backfill or foundational
11 support?

12 A No.

13 Q Do you know if it was -- scratch that.

14 As part of the collector system that was
15 installed during the Osage Wind project, an
16 underground cable system was installed; is that
17 correct?

18 A Correct.

19 Q For these underground cables, trenches were
20 made; is that correct?

21 A Correct.

22 Q Was blasting used for any of the trenches?

23 A I don't remember.

24 Q Okay. When the trenches are being
25 excavated, what was done with the excavated materials?

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1 foundation. Do you recall that happening here?

2 A I don't recall.

3 Q Were wooden poles installed for transmission
4 lines on site?

5 A I don't remember. Oh, wow. I think it's
6 safe to assume, yes.

7 Q Okay. Would you have, as project manager,
8 overseen the installation of any wooden poles --

9 A Yes.

10 Q -- if they were installed? Okay. Are you
11 generally aware of the process of how wooden poles are
12 installed on site for transmission lines in general?

13 A Yes.

14 Q Okay. Is it your understanding that holes
15 are made in the ground where the wood poles are to go
16 in; correct?

17 A Yes.

18 Q And are you aware that after the wooden pole
19 is placed in the excavated hole, that crushed rock is
20 to be used as backfill for structural support?

21 A Yes.

22 Q Okay. Do you know if crushed rock would
23 have came off-site to be used for structural support
24 for the wooden pole transmission lines for the Osage
25 Wind project?

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1 **privy to any conversations regarding any theory set**
2 **forth by the Osage Nation regarding any issues?**

3 A Not that I can --

4 (Speaking simultaneously.)

5 Q **Sorry. None that you can what?**

6 A None that I can recall.

7 Q **Okay. After material is excavated --**
8 **scratch that.**

9 **It's your understanding, sir, that all of**
10 **the excavated material that was used as backfill was**
11 **used for the purpose of structural support for the**
12 **wind towers; is that correct?**

13 A Correct.

14 MS. STEVENSON: Object to form.

15 Q (BY MR. ASHWORTH) I'm going to introduce
16 an exhibit that I'm going to mark as Exhibit
17 Number 50, which is going to be a purchase order to
18 APAC. Have you seen this document before, Craig?

19 A Seems familiar.

20 Q Okay. It appears to me to be a materials
21 purchase order to APAC - Central, Inc., billed to IEA.
22 And it's for one-and-one-half-inch aggregate, and it's
23 dated September 16th, 2014. Do you know what this
24 would have been for -- the aggregate was to be used
25 for?

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1 A I think I could assume it was for the
2 substation rig on those.

3 Q I'm sorry. For the what?

4 A Substation laydown yard.

5 Q Okay. So it would be your testimony that
6 the materials purchased here would have been used for
7 some type of purpose for the project? And let me
8 re-ask that question. If -- go ahead.

9 A I was going to say I believe so.

10 Q Let me re-ask that question. Would it be
11 your testimony that the materials listed here --
12 shale, clay, AG base -- had some useful purpose on the
13 project; is that correct?

14 A If we purchased it, yes.

15 Q In regards to after -- scratch that.

16 After all of the backfill was filled in and
17 the excavation areas for the wind towers, I believe we
18 briefly talked about this, but that backfill was
19 compacted; is that correct?

20 A Correct.

21 Q I know that we discussed the need for
22 compaction in regards to trenches and sub -- or
23 cables, underground cables. What would be the need
24 for compaction of backfill in regards to wind tower
25 foundations?

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1 A Structural support.

2 Q Okay. And that's important?

3 A Yes.

4 Q Okay. We're going to look at the technical
5 specifications one last time. I believe that's
6 Exhibit Number 47. And we're going to look at page
7 44.

8 Right there in that kind of middle of the
9 screen, yeah, the last bullet point, it says, "When
10 turbine is fully erected and operational, the backfill
11 material directly over the foundation footprint should
12 be undisturbed at all times."

13 First off, do you know what it's referring
14 to when it says "foundation footprint"?

15 A I believe that would be the concrete
16 footprint.

17 Q Okay. Do you know why it states that
18 backfill material directly over this footprint area
19 should be undisturbed at all times?

20 A Have to refer to the drawings.

21 Q Okay. You don't know why the backfill
22 material should not be disturbed?

23 A I could only assume.

24 Q Did the compaction of backfill material have
25 anything -- scratch that.

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1 A Putting the material back in and compacting.

2 Q When you're constructing a wind farm, what
3 purpose does backfill serve?

4 A Structural integrity of the wind turbines.

5 Q And would you agree that for the life of the
6 wind farm, once that backfill's placed in there to
7 support the turbine, the wind farm cannot continue to
8 operate if that backfill were to be removed?

9 A Yes. It would make it unsafe.

10 Q And what does it mean -- I think we
11 discussed a little bit or I heard this word mentioned
12 earlier -- to balance a construction site. What does
13 that mean?

14 A So if you're on a -- so, I mean, I think it
15 can mean a lot of different things. But I think what
16 you're asking is, you know, if you had -- if you had a
17 high side here and 10 feet over here you had a low
18 side, you'd want to cut and make it all level.

19 Q Is that for placement of the wind turbines
20 themselves?

21 A Yes.

22 Q Okay. So I'd like to ask you just a few
23 questions to try to understand the relationship
24 between IEA and the defendants in this case. And so
25 was it Osage Wind specifically that hired IEA?

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